

Report of the

## NORTH DAKOTA LEGISLATIVE COUNCIL

Submitted to the  
**North Dakota Secretary of State**  
Under North Dakota Century Code Section 16.1-01-17  
Thursday, September 25, 2008

### BACKGROUND

In 2004 the electorate of this state approved a constitutional amendment to Article III, Section 2, of the Constitution of North Dakota which authorized the Legislative Assembly to provide by law for a procedure through which the Legislative Council may establish an appropriate method for determining the fiscal impact of an initiative measure and for making the information regarding the fiscal impact of the measure available to the public.

In 2005 the Legislative Assembly enacted North Dakota Century Code (NDCC) Section 16.1-01-17, which requires the Legislative Council to hold hearings, receive public testimony, and gather information from agencies, institutions, or departments on the estimated fiscal impact of an initiated measure. At least 30 days before the public vote on the measure, the Legislative Council is to submit a statement of the estimated fiscal impact of the measure to the Secretary of State. Within 30 days of the close of the first complete fiscal year after the effective date of an initiated measure approved by the voters, the agencies, institutions, or departments that provided the estimates of the fiscal impact of the measure to the Legislative Council are to submit a report to the Legislative Council on the actual fiscal impact for the first complete fiscal year resulting from the provisions of the initiated measure and a comparison to the estimates provided to the Legislative Council, and the Legislative Council is to issue a report of the actual fiscal impact of the initiated measure.

Three initiative measures qualify for the ballot for the general election on Tuesday, November 4, 2008--an initiated statutory measure relating to individual and corporate income tax rates, an initiated statutory measure relating to tobacco prevention and control, and an initiated statutory measure relating to workers' compensation.

The Legislative Council followed the procedure required by statute, which is similar to the procedure for obtaining fiscal impact information which the Legislative Assembly follows during legislative sessions--those state agencies determined to have either the best information on the impact of a measure or the primary responsibility for compiling and maintaining the information that is needed were invited to prepare fiscal notes and present their findings at a meeting held by the Legislative Council on Wednesday, September 24, 2008.

### INITIATED MEASURE REGARDING INDIVIDUAL AND CORPORATE INCOME TAX RATES

This initiated measure, Initiated Statutory Measure No. 2 on the general election ballot, amends NDCC Sections 57-38-30 and 57-38-30.3, which relate to corporate income tax rates and individual income tax rates. As summarized by the Secretary of State:

This initiated measure would amend sections 57-38-30 and 57-38-30.3 of the North Dakota Century Code for tax years beginning after December 31, 2008 by lowering the state corporate income tax rates by fifteen percent and the adjusted state income tax rates by fifty percent, except for one taxpayer bracket where the reduction would be forty-five percent and for two other brackets where some income would not be taxed.

The Tax Department presented information on the estimated fiscal impact of this measure. A copy of the fiscal note requested of the department is attached as Appendix A.

### Statement of Estimated Fiscal Impact of the Measure

The fiscal note prepared by the Tax Department states the rate reduction provisions of the initiated measure can be expected to reduce state general fund revenues by an estimated \$414,237,000 in the 2009-11 biennium, based on the *Preliminary Forecast of State General Fund Revenues* that was released in August by the Office of Management and Budget. This includes \$375,983,000 relating to individual income taxes and \$38,254,000 for corporate income taxes. The fiscal note also discusses apparent errors in the initiated measure under which two individual income tax brackets list an incorrect dollar threshold upon which the bracket's rate is applied and a third error appears to use a rate that is not consistent with the overall 50 percent rate reduction shown throughout the rest of the petition. Based on current taxpayers who may be affected by these errors, two of these bracket errors result in additional fiscal losses to the state and the third bracket error potentially increases state revenue--the total effect of which results in an additional estimated net reduction of state general fund revenues of \$425,000 for the 2009-11 biennium, which is not reflected in the

\$414,237,000 state general fund revenue reduction estimate.

### **INITIATED MEASURE REGARDING TOBACCO PREVENTION AND CONTROL**

This initiated measure, Initiated Statutory Measure No. 3 on the general election ballot, enacts seven new sections to the North Dakota Century Code and amends NDCC Section 54-27-25 to establish a tobacco prevention and control program. As summarized by the Secretary of State:

This measure would establish a tobacco prevention and control advisory committee and an executive committee; develop and fund a comprehensive statewide tobacco prevention and control plan; and create a tobacco prevention and control trust fund to receive tobacco settlement dollars to be administered by the executive committee.

The Office of Management and Budget presented information on the estimated fiscal impact of this measure. A copy of the fiscal note requested of the department is attached as Appendix B.

#### **Statement of Estimated Fiscal Impact of the Measure**

The fiscal note prepared by the Office of Management and Budget states the measure changes the allocation of funds received by the state from tobacco settlement payments for the period 2009 through 2017. The Office of Management and Budget notes that while future tobacco settlement payments may vary, its estimate of the fiscal effect of the measure is based on the actual tobacco settlement payments received in 2008. The fiscal note anticipates that for each year from 2009 through 2017 the state will receive an annual payment of \$36.8 million. Of this amount, the measure provides for an estimated \$13.8 million distribution from the strategic contribution share of the tobacco settlement proceeds to the newly created tobacco prevention and control fund, \$10.35 million to the common schools trust fund, \$10.35 million to the water development trust fund, and \$2.3 million to the community health trust fund. Compared to current law, the \$13.8 million the measure allocates to the tobacco prevention and control fund will result in annual reductions of \$6.2 million to the common schools trust fund, \$6.2 million to the water development trust fund, and \$1.4 million to the community health trust fund. The fiscal note states the measure also requires a minimum of 80 percent of the tobacco settlement funds allocated to the community health trust fund to be used for tobacco prevention and control which, if the measure is approved, is estimated to be at least \$1.8 million per year.

The fiscal note states it is not possible to estimate the fiscal effect of the following provisions of the measure:

- Establishing an advisory committee and executive committee and providing for meetings and compensation;
- Funding of the statewide tobacco prevention and control program other than as recommended by the Centers for Disease Control;
- Providing for staff and other expenses of the executive committee;
- Requiring the transfer of additional funds from the water development trust fund to the tobacco prevention and control trust fund if adequate funds are not available in the tobacco prevention and control trust fund for the comprehensive statewide tobacco prevention and control program;
- Any potential savings in Medicaid and other health care costs from a reduction in tobacco usage; and
- Any potential reduction in state tobacco tax revenue from a reduction in tobacco usage.

### **INITIATED MEASURE REGARDING WORKERS' COMPENSATION**

This initiated measure, Initiated Statutory Measure No. 4 on the general election ballot, enacts two new sections to NDCC Title 65 which relate to Workforce Safety and Insurance. As summarized by the Secretary of State:

This measure would provide for the appointment by the Governor of the director for the Workforce Safety and Insurance agency, the placement of its employees into the state personnel system, and for the appointment of independent administrative law judges to conduct hearings and make final decisions.

The Office of Management and Budget presented information on the estimated fiscal impact of this measure. A copy of the fiscal note requested of the department is attached as Appendix C.

#### **Statement of Estimated Fiscal Impact of the Measure**

The statement prepared by the Office of Management and Budget states that based on contact with the Governor's office, the Human Resource Management Services division of the Office of Management and Budget, and Workforce Safety and Insurance, there will be no fiscal impact for the measure to make changes to Workforce Safety and Insurance governance and employee status.

ATTACH:3



STATE OF NORTH DAKOTA  
OFFICE OF STATE TAX COMMISSIONER  
Cory Fong, Commissioner

August 29, 2008

John Walstad  
North Dakota Legislative Council  
State Capitol  
Bismarck, ND 58505

AUG 29 2008

Dear Mr. Walstad;

You asked for the assistance of the Office of Tax Commissioner in determining the estimated fiscal impact of an initiated measure that reduces individual income tax rates by fifty percent, and corporation income tax rates by fifteen percent.

We have completed our analysis, and have determined that the rate reduction provisions of the initiated measure can be expected to reduce state general fund revenues by an estimated \$414,237,000 in the 2009-2011 biennium. This estimate is based upon the Preliminary Forecast of State General Fund Revenues that was released earlier this month by the Office of Management and Budget.

Additionally, there are three individual income tax brackets in the petition that appear to contain an error. Two of these brackets list what appears to be an incorrect dollar threshold upon which that bracket's rate is applied. The third error appears to use an incorrect rate that is not consistent with the overall fifty percent rate reduction shown throughout the rest of the petition.

We have identified approximately 325 taxpayers that may be affected by these errors, provided their filing status does not change and their income levels in 2009 and 2010 remain approximately equal to recent years' levels. Two of these bracket errors benefit the taxpayer and potentially result in additional fiscal losses to the state. The third bracket error increases the tax liability of affected taxpayers, and, therefore, potentially increases state revenue. A consideration of the offsetting fiscal impact of the three bracket errors results in an additional estimated net reduction of state general fund revenues of \$425,000 for the 2009-2011 biennium.

We conclude that the fiscal impact of this initiated measure, should it be enacted by the voters of this state and the errors addressed by the 2009 Legislative Assembly, will result in an estimated reduction of state general fund revenues of \$414,237,000 for the 2009-2011 biennium.

Please contact Commissioner Fong or me if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathryn L. Strombeck".

Kathryn L. Strombeck  
Director of Research and Education

## Potential Fiscal Impact of Initiated Measure Relating to a Statewide Tobacco Prevention and Control Plan

This initiated measure, if adopted, creates seven new sections to the North Dakota Century Code and amends section 54-27-25. The measure creates a tobacco prevention and control advisory committee and an executive committee, provides for the development of a statewide tobacco prevention and control plan, and creates a tobacco prevention and control trust fund.

Potential fiscal impacts resulting from this measure relate to:

- **Reduced funding for community health, common schools, and water development trust funds** - Moneys received by the state under Section IX(c)(2) of the Master Settlement Agreement, referred to as strategic contribution fund moneys, under current law would be allocated to the community health trust fund, the common schools trust fund, and the water development trust fund. Pursuant to this initiated measure, all strategic contribution fund moneys received by the state from 2009 through 2017 would be deposited in the tobacco prevention and control trust fund.
- **Limitation of use of moneys in the community health trust fund** – The measure requires that a minimum of 80 percent of the moneys deposited into the community health trust fund be used for tobacco prevention and control.
- **Advisory Committee and Executive Committee compensation** - The measure calls for the creation of a Tobacco Prevention and Control Advisory Committee and an Executive Committee, members of which would be entitled to compensation and expense reimbursement.
- **Funding of the statewide tobacco prevention and control program** - The measure provides that the Advisory Committee must develop a comprehensive statewide tobacco prevention and control program funded at a level equal to or greater than the Centers for Disease and Control (CDC) recommended funding level.
- **Staff and other expenses of the Executive Committee** - The measure provides that the Executive Committee may “employ staff and fix their compensation, accept grants, property, and gifts, enter contracts, make loans, provide grants, borrow money, lease property, provide direction to the state investment board for investment of the tobacco prevention and control fund, and take any action that any private individual, corporation, or limited liability company lawfully may do except as restricted by the provisions of this Act.”
- **Potential reduced funding to the water development trust fund to offset shortfall** – The measure provides that if the tobacco prevention and control trust fund does not have adequate money to fund a comprehensive statewide tobacco prevention and control program, money will be transferred from the water development trust fund to the tobacco prevention and control trust fund in an amount determined necessary by the Executive Committee.
- **Potential health care savings** - Reduced Medicaid and other health costs may result from a decline in tobacco usage.

It is not possible to determine how passage of this measure would affect the tobacco prevention and control programs currently funded from the community health trust fund or other health related programs that also receive moneys from the fund.

### **Staff and Other Expenses of the Executive Committee**

The measure provides that the Executive Committee may "employ staff and fix their compensation, accept grants, property, and gifts, enter contracts, make loans, provide grants, borrow money, lease property, provide direction to the state investment board for investment of the tobacco prevention and control fund, and take any action that any private individual, corporation, or limited liability company lawfully may do except as restricted by the provisions of this Act." It is not possible to estimate the number, type, or compensation of staff persons who might be employed by the Executive Committee. In addition, loans or grants made by the Executive Committee, along with property leases or other activities allowed under this measure, could also result in expenditures that are not possible to estimate at this time.

### **Potential Reduced Funding to the Water Development Trust Fund to Offset Shortfall**

The measure provides that if the tobacco prevention and control trust fund does not have adequate money to fund a comprehensive statewide tobacco prevention and control program, money will be transferred from the water development trust fund to the tobacco prevention and control trust fund in an amount determined necessary by the Executive Committee.

As previously indicated, it is not possible to estimate the compensation or expense reimbursement that might be provided to members of the Executive or Advisory Committees or the administrative and staffing costs that might be incurred by the Executive committee. Consequently, it is not possible to estimate what, if any, shortfall may occur which could result in a transfer from the water development trust fund. However, the strategic contribution fund moneys that would be used to fund the provisions of this measure are anticipated to be received for only nine years after the potential enactment of this measure. The comprehensive tobacco prevention and control program created by this measure would be an ongoing, permanent program of the state. Consequently, it seems likely that at some point moneys in the tobacco prevention and control trust fund would be depleted and a transfer from the water development trust fund would be required.

### **Potential Health Care Savings**

If the efforts of the Executive Committee are effective in reducing tobacco usage in North Dakota, it is likely that some reduction in Medicaid and other health care costs would result. However, it is impossible to determine what, if any, savings the state may realize from such a reduction in tobacco usage.

### **Potential Reduction in State Tobacco Tax Revenue**

If the efforts of the Executive Committee are effective in reducing tobacco usage in North Dakota, it is likely that the state would realize some reduction in state tobacco tax collections. The state currently receives approximately \$22.0 million annually in tobacco tax collections. It is impossible to determine what, if any, reduction in revenue the state may realize from such a reduction in tobacco usage.

APPENDIX C  
AUG 20 2008

STATE OF NORTH DAKOTA  
OFFICE OF MANAGEMENT AND BUDGET

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FAX - (701) 328-3230

August 20, 2008

Mr. John Walstad  
Code Revisor  
North Dakota Legislative Council  
600 East Blvd. - State Capitol  
Bismarck, ND 58505-0360

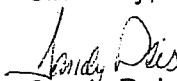
Dear Mr. Walstad,

This letter is in response to your request of July 1, 2008 to analyze the fiscal impact of the initiated measures.

Based on my analysis, there will be no fiscal impact for the initiated measure to make changes to Workforce Safety and Insurance governance and employee status. Contact has been made with the Governor's Office, the Human Resource Division of OMB, and Workforce Safety to draw this conclusion.

Please feel free to contact me at 328-2148 should you have any questions.

Sincerely,

  
Sandy Deis, OMB  
Budget Analyst

Cc:Pam Sharp  
Sheila Peterson

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